

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Pablo Clarke

CHAPTER 13

Case No: 11-42730-JF

Adversary Pro. No. 11-01299-jf

Debtors.

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Pablo Clarke

COMPLAINT

Adv. No. 11-01299-jf

Plaintiffs,

Case Assigned to:
Hon. Jerome Feller

-against-

Nationstar Mortgage LLC

Defendant.

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AFFIRMATION IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT

Gus Michael Farinella, duly affirms under the penalties of perjury as follows:

1. I am an attorney duly admitted to practice law in the United States District Court for the Eastern District of New York.
2. I am the bankruptcy attorney for Pablo Clarke, the debtor herein, and as such am familiar with the facts and circumstances set forth herein.

3. This Affirmation is presented in support of my motion for an order: (a) pursuant to Rule 55(b) of the Federal Rules of Civil Procedure, for entry of a default judgment against Defendant, Nationstar Mortgage LLC, pursuant to 11 U.S.C. Section 506(a) declaring that the claim held by Defendant secured by a mortgage lien on the Plaintiff's real property be deemed unsecured and pursuant to 11 U.S.C. Section 506(d) declaring that said lien is null and void; and (b) for such other and further relief as this Court deems just and proper.

PRELIMINARY STATEMENT

4. Pablo Clarke, (the "Debtor") filed a voluntary petition for relief under Chapter 13 of the Bankruptcy Code on April 1, 2011 (the "Petition Date").
5. This Adversary Proceeding was initiated in order to obtain a judgment declaring that the under-secured second mortgage held by Nationstar Mortgage LLC be deemed null and void and any claim filed by Nationstar Mortgage LLC be reclassified as wholly unsecured pursuant to 11 U.S.C. Section 506(a) and 506(d).
6. For all the reasons set forth below, it is respectfully requested that this Court enter judgment for an order of default against Defendant Nationstar Mortgage LLC pursuant to Rule 55 of the Federal Rules of Civil Procedure for their failure to serve an Answer to the Complaint or otherwise appear in this Adversary Proceeding.

FACTS

7. The Debtor in an individual residing at 3802 Clarendon Rd, Brooklyn, NY 11203 having Kings County Tax Map Designation of Block: 4955, Lot 1 (the “Real Property”) and is the fee owner of the real property thereon.
8. Nationstar Mortgage LLC is the holder of the second mortgage on the Real Property and according to their Proof of Claims have a principal place of business located at 350 Highland Drive, Lewisville, TX 75067 and a mailing address of PO Box 829009 Dallas, TX 75382-9009. In addition, as shown in their Proof of Claim their Authorized Agent is listed as Larry Buckley, Esq. of Brice, Vander Linden & Wernick, P.C. with an address of 9441 LBJ Freeway, Suite 250 Dallas, Texas 75243.
9. The fair market value of the Real Property owned by the Debtor pursuant to an appraisal dated February 21, 2011 prepared by Anthony Auguste of A.D.A Resources LLC is \$365,000.00. (Annexed hereto and made a part hereof as “**Exhibit A**” is a copy of a Formal Appraisal of the Debtor’s real property prepared by Anthony Auguste of A.D.A Resources LLC. stating a value of \$365,000.00)
10. The outstanding balance of the first mortgage on the Real Property held by Nationstar Mortgage LLC account number 596411765 as of the Petition Date was \$389,055.40. (Annexed hereto and made a part hereof as “**Exhibit B**” is a copy of the proof of claim filed by NATIONSTAR MORTGAGE LLC for the First Mortgage showing a balance due of \$389,055.40. Also attached is a copy of the March 2011 monthly billing statement

from NATIONSTAR MORTGAGE LLC for the first mortgage held on the Debtor's real property showing a balance owed of \$389,788.37)

11. The outstanding balance on the second mortgage on the Real Property held by Nationstar Mortgage LLC account number 596411768 as of the Petition Date was \$98,990.56.
(Annexed hereto and made a part hereof as "**Exhibit C**" is a copy of the proof of claim of Nationstar Mortgage LLC showing a principal balance owed of \$98,990.56)
12. Pursuant to 11 U.S.C. Section 506(a) the debt held by Nationstar Mortgage LLC should be deemed unsecured. See also Pond v. Farm Specialist Realty 252 F.3d 122 (2nd Cir. 2001).
13. Pursuant to 11 U.S.C. 506(d) the subordinate lien held by the Defendant must be declared null and void.
14. Based on the value of the real property at issue and the remaining balance on the first mortgage, the Defendant's second mortgage lien is totally unsecured.
15. On April 14, 2011 this Adversary Proceeding was instituted to obtain a judgment declaring that the second mortgage lien held by the Defendant should be declared null and void and that the debt held by the Defendant be deemed unsecured pursuant to 11 U.S.C. Section 506(d) and 506(a). (Annexed hereto and made a part hereof as "**Exhibit**

D” is a copy of the Summons and Complaint and Affidavit of Service filed in this matter).

16. Defendant, Nationstar Mortgage LLC, has neither served nor filed an Answer with respect to the Complaint. It also failed to appear at the pre-trial conference held on May 31, 2011 at 10:00 AM.
17. Defendant, Nationstar Mortgage LLC, is now in default with respect to this Adversary Proceeding.
18. Therefore, I request that this Court grant my motion and enter a default judgment against Defendant, Nationstar Mortgage LLC, pursuant to Rule 55 of the Federal Rules of Civil Procedure, declaring that the debt for the second mortgage account number 596411768 held by the Defendant be deemed wholly unsecured and that the underlying lien be declared null and void and that the Kings County Clerk be directed to cancel and discharge the subordinate second lien upon the successful completion of the Debtor’s Chapter 13 plan. (Annexed hereto and made a part hereof as “**Exhibit E**” is a copy of the proposed judgment).
19. I also request that this Court waive the requirement of the filing of a memorandum of law as no novel issue of law is presented with respect to the issues herein.

20. No prior application has been made to this or to any other Court for the relief requested herein.

WHEREFORE, it is respectfully requested that this Honorable Court grant the Plaintiff's motion in its entirety and such other and further relief as this Court deems just and proper.

Dated: New York, NY
June 9, 2011

Law Offices of Gus Michael Farinella PC
Attorneys for the Debtor
Pablo Clarke

By: /s/ Gus Michael Farinella
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